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EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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OCT 27 2014

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BOB STUMP, Chairman

GARY PIERCE, Commissioner

BRENDA BURNS, Commissioner

SUSAN BITTER SMITH, Commissioner

BOB BURNS, Commissioner

DOCKETED BY

AZ CORP COMMISSION

DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF)
 WILLOW VALLEY WATER CO., INC. FOR)
 AN EXTENSION OF ITS CERTIFICATE OF)
 CONVENIENCE AND NECESSITY.)

ORIGINAL

DOCKET NO. W-01732A-05-0532

McKELLIPS LAND

CORPORATION'S

EXCEPTIONS TO

RECOMMENDATION OF

ADMINISTRATIVE LAW JUDGE

On March 23, 2006, the Arizona Corporation Commission ("Commission") issued Decision No. 68610 which approved the application of Willow Valley Water Co., Inc. (the "Company") for an extension of its Certificate of Convenience and Necessity¹ to provide public water utility service to approximately 48.53 acres of land identified as "*Parcels A, B, and C*" in Mohave County Arizona owned by the developer McKellips Land Corporation ("MLC"). Decision No. 68610 required that the Company obtain and file with Docket Control, as compliance items (the "Compliance Items") copies of the MLC's main extension agreements and Letters of Adequate Water Supply ("LAWS") with respect to the property no later than one year after the March 23, 2006 decision.

MLC was granted intervention in this docket by Decision No. 71174 (June 30, 2009), pursuant to A.A.C. R14-3-105(A) as an entity "directly and substantially affected by the proceedings". MLC had been developing an eighty lot subdivision consisting of approximately 21.9 acres in three phases within portions of the above referenced *Parcels B and C* known as Willow Valley Estates 20, *Tracts 4134A, B and C*. Tract 4134C was later renamed Willow Valley Estates 21, Tract 4228, but for continuity and convenience continued to be referred to in these proceeding as "*Tract C*" (collectively the three phases are hereinafter referred to as the "Subdivision").

¹ Decision No. 32436 (August 23, 1960) granted the Company a Certificate of Convenience and Necessity covering an area of approximately 2,700 acres located several sections of property all of which were at one time owned by MLC or its affiliates.

1 After several motions for extension of the LAWS deadline had been made and granted, on
2 September 30, 2013, MLC filed with the Commission a document entitled "McKellips Land Corporation's
3 Motion for Extension of Time and Confirmation of Compliance with Order." In that motion MLC disclosed
4 that "[I]n reviewing the record in order to prepare this Motion the attorneys for MLC have determined that
5 there appears to be some confusion in the record between the property identified as "*Parcels A, B and C*"
6 which were added to the CC&N and the subdivision located within Parcels B and C, which has been referred
7 to '*Tract C*.'" An effort was made in that motion to explain the confusion, and maps of the various "*parcels*"
8 and "*tracts*" were attached as exhibits to the motion. Compliance Items had been submitted to the
9 Commission for the first two phases of the Subdivision, Willow Valley Estates 20, Tracts 4134A and B but
10 MLC had encountered a multitude of unexpected and overwhelming difficulties in obtaining the LAWS for
11 the third phase, "*Tract C*" (which had in the interim been renamed "Willow Valley Estates 21, Tract 4228"),
12 and MLC had to request on behalf of the Company, by motion herein, extensions of the LAWS deadline
13 from the Commission in order to obtain the relevant Compliance Items for that subdivision, the last of which
14 motions and the supplements thereto requested an extension to September 30, 2014, by which time all
15 Compliance Items had at last been filed with the Commission for that phase/tract. In summary, the
16 Subdivision was comprised of three separate phases which were individually identified as "*Tracts A, B, and*
17 "*C*" but covered only approximately 21.9 acres of the original 48.5 acres of the additional extension area
18 added by Decision 68610. From the record it can easily be determined that "*Tract C*" is located wholly
19 within "*Parcel C*"

20 MLC has now succeeded in obtaining and filing with the Commission copies of the required
21 Compliance Items for each of the three phases/tracts of the Subdivision, but is unable to do so (and has
22 abandoned any effort to do so) with respect to the balance of the 48.53 acres described in Decision 68610
23 which was not included within the three Subdivision phases/tracts.

24 Administrative Law Judge Scott M. Hesla filed herein on October 17, 2014, in the form of an
25 Order, a recommendation to grant to MLC's latest motion for an extension time on behalf of Willow Valley
26 to file the LAWS. However, the Findings of Fact appear to continue to confuse "*Parcels A, B, and C*" of

1 Decision 68610 with "Tracts A, B and C" of the Subdivision. The filing of these Exceptions to the Law
2 Judge's recommendation is only for the purpose of clarifying the applicable facts so that the Commission is
3 not inadvertently mislead in making its final order.

4 MLC latest motion (and the supplements thereto) moves the Commission for an order (a)
5 confirming that compliance with the LAWS deadline in Decision No. 68610 (March 23, 2006) has been met
6 as it affects that portion of the property within the expanded CC&N encompassing the Mohave County
7 subdivisions described as Willow Valley Estates 20, Tract 4134-A², and Tract 4134-B³, and Willow Valley
8 Estates 21, Tract 4228⁴ (formerly Willow Valley Estates 20, Tract 4134-C) and (b) granting Willow Valley
9 an extension of the time deadline in Decision No. 68610, until September 30, 2014, to file a copy of the
10 developer's LAWS (which was done prior to that date) for Willow Valley Estates 21, Tract 4228 ("Tract C"
11 herein).

12 There is currently no way to obtain LAWS for those areas of Parcels A and B of the original CC&N
13 extension which are not included in the subject subdivisions, though since the Company is the only water
14 company that could ever service those isolated areas it seemingly makes no sense to be concerned about
15 prohibiting those small isolated undeveloped areas, which contain only approximately 27 acres, from being
16 added to the CC&N since they amount to only about one percent of an extensive CC&N covering
17 approximately 2,700 acres.

18 Attached hereto and incorporated herein is an Exhibit "A" which sets forth the modifications that
19 MLC respectively suggests be made to Judge Hesla's recommendation which are believed will correct the
20 confusion regarding the references to "parcels" and "tracts" and confirm that the subdivision phases are all in
21 compliance with Decision 68610.

22 * * * *

23
24 ² Recorded August 16, 1996 at Fee No. 96-45414 Official Records of Mohave County, Arizona

25 ³ Recorded March 17, 2005 at Fee No. 2005-27028 Official Records of Mohave, County, Arizona

26 ⁴ Until the plat is recorded the property is currently legally described as Parcel "A", as shown on Parcel Plat, recorded April 7, 2010 in Book 33 of Parcel Plats, Pages 16-16A, being a portion of Section 21, Township 18 North, Range 22 West, G.&S.R.B.&M., Mohave County, Arizona

1 RESPECTFULLY SUBMITTED this 27th day of October, 2014.

2 CARSON MESSINGER PLLC

3
4 By 

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7 Original and 13 copies of the foregoing
8 filed this 27th day of October, with:

9 Docket Control
10 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

11 Copy of the foregoing hand-delivered and/or mailed
12 this 27th day of October, to:

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Exhibit "A"

Findings of Fact

Change Paragraph 6 to read as follows:

"6. On March 23, 2009, McKellips Land Corporation ("MLC"), the developer of Parcels A, B and C, filed an application to intervene in this docket and a motion for an extension of time to file the LAWS. In its motion MLC clarified that included within the three Parcels A, B and C was a subdivision, Willow Valley Estates 20, Tract 4134, which was being developed in three phases, Tracts 4134 A, B and C. MLC reported that it had obtained and that the Company had submitted to the Commission the LAWS for Tracts A and B of the subdivision but that it had encountered difficulties in obtaining the LAWS for Tract C, which had been renamed Willow Valley Estates 21, Tract 4228. As a result MLC requested an extension of the LAWS deadline for an additional year, until March 23, 2010. Tract C is located within Parcel C."

Modify Paragraphs 9 and 11 by changing the words "Parcel" each time they appear to the words "Tract".

Add a Paragraph 14 to read as follows:

"14. We further find that compliance with the LAWS deadline in Decision No. 68610 (March 23, 2006) has been met as it affects that portion of the expanded CC&N encompassing the real property within the Mohave County subdivisions described as Willow Valley Estates 20, Tract 4134A and Tract 4134B and that by extending the LAWS deadline in Decision No. 68610 to September 30, 2014, as hereinafter ordered, as it affects that portion of the expanded CC&N encompassing the property described as Willow Valley Estates 21, Tract 4228 (previously known as Willow Valley Estates 20, Tract 4134C), will also bring that subdivision into compliance with the LAWS deadline in Decision No. 68610."